IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 17549 of 2005(L)

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ia.87/04 IN OS.653/2001 of PRL.MUNSIFF COURT,NEDUMANGAD

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PETITIONERS:

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1. ANNAPOORNA DEVI,
   HOUSE NO.T.C.2/1235 (G.R.A) 232,GOURISHAPATTOM P.O
   THIRUVANANTHAPURAM.

2. G. GOPALAKRISHNA PILLAI OF -DO- -DO-.

BY ADV. SRI.T.S.RADHAKRISHNA PILLAI
SRI.T.R.RAJEEV

RESPONDENTS:

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1. DR. K. RAJASEKHARAN NAIR,
   RESIDING AT ANUPAMA, PRASANTH NAGAR, ULLOOR,
   THIRUVANANTHAPURAM.

2. GIRISH KUMAR, S/O.RAJASEKHARAN NAIR,
   ANUPAMA, PRASANTH NAGAR, ULLOOR,THIRUVANANTHAPURAM

BY ADV. SRI.K.K.JOHN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

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W.P.(C)No.17549 OF 2005

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DATED THIS THE 22ND JUNE, 2007

J U D G M E N T

Ext.P5 order passed by the learned Munsiff on an application for commission submitted by the plaintiffs is under challenge in this Writ Petition under Article 227.

2. Heard both sides.

3. It is seen from Ext.P5 that the learned Munsiff has given good reasons as to why the commission application is being allowed only to the extent it relates to point No.5 mentioned in the commission application. As noticed by the learned Munsiff, earlier reports are available on record in respect of the other points. The earlier reports concededly do pertain to point No.4 in the commission application. But the learned Munsiff has given a plausible reason as to why the commissioner is not being deputed for a report regarding point No.4 also. In short, I do not find any infirmity about Ext.P5 warranting correction in the visitorial jurisdiction under Article 227 which will be exercised only in exceptional circumstances. I confirm Ext.P5. However, I make it clear that confirmation of Ext.P5 will not stand in the way of the petitioners cross-examining the advocate commissioner during the trial of the suit and adducing acceptable evidence regarding

the non-acceptability of the earlier commission reports and if the court becomes convinced on such evidence that the earlier commission reports are not acceptable, confirmation of Ext.P5 will not stand in the way of the court deputing a fresh commission or remitting the reports to the same commissioner at that stage. In order to enable compliance of the above observations, there will be a direction to the learned Munsiff to hear the parties on the question of acceptability of the earlier commission reports after the entire trial is over and pass orders on that question first, before judgment is delivered in the suit on the basis of the final hearing.

The Writ Petition is dismissed subject to the above directions.

(PIUS C.KURIAKOSE, JUDGE)

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